

STATUTORY IMPASSE PROCEDURE
IOWA PUBLIC EMPLOYMENT RELATIONS BOARD
FACTFINDING RECOMMENDATIONS

IMPASSE BETWEEN *

CITY OF IOWA CITY *

Department of Public Safety *

-and- *

THE POLICE LABOR *

RELATIONS ORGANIZATION *

OF IOWA CITY *

PERB Case No CEO 338/Sector 3

Decision Issued: March 1, 2004

Jonathan Dworkin, Factfinder.

Representing the City

Steve Rynecki

Chief Negotiator

Representing the Bargaining Agent

Bob Rush

Attorney for the PLRO

* * *

IMPASSE SUMMARY

With a population just over 62,000, Iowa City, Iowa is the sixth largest municipality in the state. It is slightly smaller than Waterloo and larger than Council Bluffs. It is a remarkably beautiful, cultured community; at its center is one of the nation's most respected universities, the University of Iowa, home of the Hawkeyes.

This is a contractual impasse factfinding dispute between the City and an independent labor organization, the Police Labor Relations Organization of Iowa City ("PLRO"). The PLRO is the recognized Bargaining Agent for Police Officers below the rank of sergeant, excluding confidential employees and those scheduled to work less than half-time.

The current Collective Bargaining Agreement will end June 30, 2004. The controversy here involves terms for another one-year Contract. Through bargaining and mediation, the parties resolved all but two issues. Wages and Health Benefits remain at impasse; they have been referred for factfinding recommendations. The PLRO demands 3.5% be added to the base pay for 2004-2005. The City's counteroffer is 2%. During the hearing, it became evident that the City's factfinding wage proposal was strategically less than the settlement it expected. It had already concluded a backloaded three-year contract with the International Association of Fire Fighters ("IAFF") at 2.75% + 2.75% + 2.85%. It also settled a two-year agreement with the American Federation of State, County and Municipal Employees ("AFSCME", representing the City's service workers) at 2.75% + 2.75%. The City's Advocate was too sophisticated in collective bargaining to believe that his 2% offer would be acceptable. But he knew that it might induce me to recommend more than 2% but less than 3.5%.¹

¹ Every experienced factfinder knows that often (but not always), negotiators expect a wage recommendation between the demand and counteroffer. This either makes factfinding a sham, or requires a factfinder to divine where the settlement lies.

Health insurance is the City's proposal to require employees to carry a greater percentage of individual and family coverage cost. The Union's position is that no change should be recommended. Under the existing plan, Police Officers without family coverage pay no premiums; those who insure their families pay 5 percent of the premium cost. The policy features 90/10 co-pay for both in- and out-patient medical services, provided that the maximum charge to any member of the Unit cannot exceed \$500 per year. It also has lower annual deductibles of \$100 for prescriptions, anesthetics, blood plasma, casts, crutches, durable medical equipment, private-duty nursing services, air and ground ambulances, and "other supplies when ordered by a physician."

November 20, 2003, the plan administrator² advised the City that a 14 percent savings probably would result from the following changes:

1. Increase coinsurance from 10% to 20%: Rates would decrease about 2%
2. Increase OPM [out-patient medical] from \$500 to \$1,500: Rates would decrease about 7%.
3. Increase Other deductible[s] from \$100 to \$300: Rates would decrease about 5%.

² Iowa City is self-insured.

DECISIONAL GUIDELINES AND STANDARDS

Iowa pioneered in legislation authorizing and regulating union representation for public employees. In the mid-1970's, while most so-called "liberal" states still viewed public workers as "servants" without organizational protections, the Iowa General Assembly enacted a Public Employment Relations Law, which began with the following statement of principle:

The general assembly declares that it is the public policy of the state to promote harmonious and cooperative relationships between government and its employees by permitting public employees to organize and bargain collectively . . .

Though the law prohibited strikes in the public sector, it did establish the framework for grievance procedures. More importantly, it required both employers and recognized bargaining agents to negotiate collective bargaining agreements in good faith.

The Act calls for three successive modes of assistance when contracting parties reach a negotiations impasse: First is mediation, which is simply the insertion of an outsider into negotiations who has expertise in helping bargaining teams to find ways to overcome the obstructions to settlement. Second, if mediation

does end the controversy, the law provides for factfinding.³ A factfinder, who is either mutually selected by the parties or appointed by the Public Employment Relations Board ("PERB"), holds hearings on the impasse items and issues recommendations. The parties to a dispute can either accept or reject a factfinder's settlement suggestion. The third stage is interest arbitration. An arbitrator or tripartite board, again selected or PERB appointed, conducts hearing(s), reviews evidence, and submits final, binding awards on each of the disputed contract items.

Arbitrators, of course, have more power to resolve disputes than factfinders. But the scope of their authority also is much more restricted. Section 20.22 of the Public Employment Relations Law addresses binding arbitration and states in part:

3. The submission of the impasse items to the arbitrators shall be limited to those issues that had been considered by the fact-finder and upon which the parties have not reached agreement. ***With respect to each such item, the arbitration board award shall be restricted to the final offers on each impasse item submitted by the parties to the arbitration board or to the recommendation of the fact-finder on each impasse item.*** [Emphasis added.]

³ After the law passed, the general assembly amended it to relieve teachers' organizations from factfinding. Their impasses proceed directly from mediation to interest arbitration.

No such limitations govern factfinders. Section 20.21, which describes their authority, provides simply:

The fact-finder shall make written findings of facts and recommendations for resolution of the dispute . . .

I have not included this review of the law as "filler," to lengthen the decision or add to its cost. It is here because the Advocates for both the City and the Union called my attention to the breadth of my authority repeatedly during the hearing. Both seemed to recognize, as did I, that there is an inherent problem in the wage structure for this Unit, and it will not be cured by adding 2 percent, 2.75 percent or even 3.5 percent to the base. The base wage is what new hires are paid. It has more to do with the Municipality's interest in competing for new Police Officers than what most of the Unit members will earn in the coming year. According to the City's own testimony, the majority of its Officers cluster at about ten years' continuous service.

Section 20.22 also sets forth mandatory guidelines for interest arbitrators that do not appear in the language on factfinding. Subsection 9 states:

9. The panel of arbitrators shall consider, in addition to any other relevant factors, the following factors:

- a. Past collective bargaining contracts between the parties including the bargaining that led up to such contracts.
- b. Comparison of wages, hours and conditions of employment of the involved public employees with those of other employees doing compara-

ble work, giving consideration to factors peculiar to the area and the classification involved.

c. The interests and welfare of the public, the ability of the public employer to finance economic adjustments and the effect of such adjustments on the normal standard of services.

d. The power of the public employer to levy taxes and appropriate funds for the conduct of its operations.

These regulations might not govern factfinding under legislative declaration, but it would be absurd for a factfinder not to follow them. Reduced to their essence, they say that one who is called upon to assist in negotiations should be mindful of the interests of both the employer and the employees and should endeavor to find the fairest balance between the two.

In making these recommendations, I have tried to follow Section 20.22. Subsection 9, but only to the extent that the parties furnished evidence to justify findings of fact. Notably, there was scant evidence on ¶d. Therefore, I was unable to make a meaningful determination concerning Iowa City's power to levy taxes. However, the Advocates presented exhibits and arguments concentrating on parity in comparable communities (¶b), past collective bargaining agreements (¶a), and "ability to pay" (¶c). In addition, the record contains many references and exhibits on the subject of internal parity – comparisons between what the Employer offered the Police and what it agreed to pay the firefighters and service employees. Although this kind of parity is not mentioned in any of the sub-paragraphs of Subsection 9, it traditionally carries significant weight in factfinding and

interest arbitration. Therefore, it should be regarded as a guideline from the preamble to Subsection 9 – the requirement to consider the listed subjects “in addition to any other relevant factors.”

FACTS, CONTENTIONS AND FINDINGS

WAGES: Despite that the University of Iowa has given this community a strong presence with consistent employment that has to be the envy of other less endowed Iowa municipalities, the facts show that the City is facing significant reductions for fiscal year 2005. Revenues here are based almost entirely on property taxes. For 2005, the State rolled back property taxes from \$17.596 to \$17.352 per \$1,000 assessed value. It also made other cuts in aid to cities, as demonstrated by the following Employer exhibit:

LOSS OF FINANCIAL AID

State Population Allocation	-\$570,000
Personal Property Replacement	-\$300,00
Rollback (effect of:)	-\$800,000
Bank Franchise	-\$100,000
Machinery & Equipment (replacement)	-\$750,000
Gas & Electric Utilities (revenue guarantee)	\$?
Federal Government Aid Package to state \$100,000,00 (State kept it)	

It is not uncommon for communities looking toward major general-fund losses to try to reach economic stability by undercutting employee expectations for benefits and wage increases. After all, the expense of employees is the chief burden on any municipality's resources. Therefore, wage freezes and benefit cuts (or cost sharing) is the most painless way to achieve financial security. But Iowa City, to its credit, did not take that approach – not entirely. It did lay off one library FTE (full-time position equivalency), five police FTE's, four fire positions, two parks and recreations FTE's, 2½ public works FTE's, and 2½ finance and administration FTE's. It made drastic reductions in public services, doubled the fines for parking violations, reduced public events by 10 percent, increased fees for housing inspections, and took other actions too numerous to recite here. The net result was a projected addition to the general fund (to absorb the projected loss) of nearly \$1 ¾ million (\$1,727,0000.)

The Employer concludes that, under the circumstances, a settlement for the Police around what the firefighters and service employees accepted would be generous and more than reasonable. The problem here, as the Employer sees it, is that the PLRO is the last to negotiate. Money is not the real issue, according to the City: "These guys just want to show the others they can do better."⁴

⁴ City Advocate's closing statement.

With few exceptions, the negotiating teams relied on the same Iowa cities for their arguments on external parity. They introduced numerous charts, graphs, and similar exhibits to support their respective positions. While I studied all of them, two left me with impressions especially favorable to the Union. The first was an exhibit on pay for sergeants; only one of the comparable cities pays its sergeants more. In other words, Iowa City is second in the state in that category. Here, sergeants earn \$70,012; top Police Officers are paid \$48,588 per year. The differential, \$21,424, is a staggering 44 percent. In response, the Employer called attention to the fact that sergeants do not receive overtime, while a Police Officer averages \$5,000 per year, and that reduces the differential to about 26 percent.

I have difficulty understanding the City's logic. Why is it an advantage for these Officers to work about 6.5 percent over their regular shifts? Two primary goals of the labor movement have always been to guarantee a fair day's pay for a fair day's work and to assure that employees will have leisure time for themselves and their families. Overtime may be a bonus for some, but it is a penalty for others. Why is there so much Police overtime in Iowa City? The following Union exhibit seems to hold the answer:

CITIES	POPULATION	SWORN OFFICERS	CITIZENS PER OFFICER
Ames	50,731	48	1,056.9
<i>Iowa City</i>	62,220	71	876.34
Cedar Falls	36,145	42	860.6
Bettendorf	31,275	41	762.8
West Des Moines	43,403	63	688.94
Sioux City	85,013	125	680.1
Dubuque	57,686	90	640.96
Cedar Rapids	120,758	195	619.27
Davenport	98,359	159	618.61
Waterloo	68,747	121	568.16
Des Moines	198,682	375	529.82
Council Bluffs	58,268	110	529.71

Except for Ames, every other community on the list of agreed comparables has a higher ratio of police officers to population than Iowa City. It is not my province to dictate what this City's staffing should be or how it ought to operate its Department of Public Safety. It is evident that the Administration believes hiring fewer Officers and paying overtime penalties to carry out its mission is more expedient than enlarging the Police Department. Council Bluffs, which is smaller than Iowa City by 3,952 people (6%) has thirty nine more officers. To reach even this number, Iowa City would have to increase its force by 55 percent. Such increase

would undoubtedly eliminate most if not all of the overtime, but at a greater cost. The point I'm trying to make is that available overtime is not an allowance that the City can legitimately use to reduce what would otherwise be an appropriate wage offer to the Union.

Internal parity, which is usually the product of pattern bargaining, is pertinent to this dispute. I began hearing public-sector cases in 1971, several years before the Iowa law. Another Arbitrator, well known in Iowa, was also active in the field – Doctor Harry Graham. Doctor Graham and I have debated publically and privately for more than a quarter-century concerning the influence of internal parity. My position in those debates was that each public bargaining unit had a right and obligation to act independently – to achieve the best terms it could for its members regardless of what other units might settle for. I did not believe in “lighthouses” – units that set the pattern others mechanically followed. I regarded that as a repudiation of union leadership responsibilities.

Though my philosophy has remained fairly constant throughout the last thirty three years, it has been tempered by practicality and reality. It is fair to say that a majority of public employers cannot afford to make separate deals with each of its bargaining units unless it is willing to risk dissension, unrest, labor trouble. So, in most cases internal parity is crucial both to bargaining units and employers. This is especially true among safety forces (firefighters and police), which ordi-

narily expect economic consistency and equality in their collective bargaining agreement.⁵

Curiously, statistics show that Iowa City has not customarily negotiated identical raises with each of its three bargaining agents, and there is no indication that the separate settlements that have occurred have caused the unrest that advocates of pattern bargaining predict. Over the last decade, each union has ratified its contract without any "me-too" clauses or reopener agreements designed to establish parity with the best settlement. The following table, derived from City Exhibit M illustrates the point:

YEAR BAR- GAINED	CONTRACT YEAR	AFSCME	FIRE	POLICE
July, 1994	1995	3%	N.A.	3%
July, 1995	1996	3%	3.25%	3.25%
July, 1996	1997	3.25%	2.8%	2%-2%
July, 1997	1998	3%	3.25%	3%
July, 1998	1999	2%-2%	2%-2%	3%
July, 1999	2000	3%	3%	3%
July, 2000	2001	3%	3.25%	3.25%
July, 2001	2002	3.25%	3.25%	3.25%
July, 2002	2003	3.25%	3.25%	3.25%
July, 2003	2004	3%	2.75%	3%

⁵ This has always been puzzling to me. It is hard to imagine a single firefighter who would be willing to accept a police officer's eight-hour, five-day schedule in exchange for an extra one percent on his/her base wage.

While I concede that pattern bargaining is the practice and expectation of most public-sector negotiators, and am inclined to follow the doctrine instead of upsetting tradition, I find that the history in Iowa City releases me from this constriction. Even though the Employer could show that the 2002 and 2003 agreements with the three unions contained identical raises and that 2005 settlements for AFSCME and the IAFF were apart by only one-tenth of a percent, the record shows that there were additional wage advantages that were exclusive to the IAFF contract. The tentative agreement that led to that contract was submitted into evidence by the City as Exhibit P. It provides in part:

TENTATIVE AGREEMENT

CITY OF IOWA CITY
AND
IOWA CITY ASSOCIATION OF PROFESSIONAL FIREFIGHTERS
IAFF, AFL-CIO LOCAL 610

January 20, 2004

The parties hereby agree to the following changes in the Collective Bargaining Agreement to be in effect from July 1, 2004 through June 30, 2006 (FYO5 and FYO6)

2. An across-the-board wage increase of 2.75% at the beginning of FYO5.
3. Increase annual Holiday Pay as provided in Article VIII from \$250.00 (\$25 per holiday) to \$310.00 (\$31 per holiday) effective in FYO5.

4. An across-the-board wage increase of 2.75% at the beginning of FYO6.
5. Increase each step in the annual longevity payment schedule under Article XXVIII, Section 2 by \$50.00 effective in FYO6.

Turning to external parity, Union Exhibit 7 shows that Iowa City ranks seventh out of thirteen municipalities in top pay for Police Officers. It also shows, however, that the fourth through seventh cities are in a cluster, with differences amounting to only pennies per hour:

CITY	GROSS SALARY	HOURLY
Davenport	\$54,554.00	\$26.22
Des Moines	\$54,181.00	\$26.05
Bettendorf	\$54,006.00	\$26.25
Council Bluffs	\$49,440.19	\$23.76
Waterloo	\$49,296.00	\$23.70
West Des Moines	\$48,910.00	\$23.50
Iowa City	\$48,588.00	\$23.36
Sioux City	\$47,132.12	\$22.68
Coralville	\$46,749.00	\$22.47
Cedar Rapids	\$46,550.00	\$22.38
Ames	\$45,983.00	\$22.10
Dubuque	\$42,774.00	\$20.55
Cedar Falls	\$41,381.00	\$19.89

With respect to rankings, the Employer argument on overtime bears repeating. If, as the City contends, each Officer on average receives \$5,000 overtime pay annually, that could raise Iowa City from seventh to fourth on the list. But the argument lacks substance for two reasons: First, it makes no accounting for overtime paid in other comparable municipalities. It is illogical to assume that this is the only City on the list that employs police officers beyond their regular shifts. Second, as I stated earlier, I do not believe premium pay is a substitute for fair wages.

Perhaps the most influential exhibit was introduced by the City. It is a colored line graph illustrating where wages of this Unit rank against police in other cities at each step of PLRO members' careers. It shows that these Employees start with low wages, but rise to the top of the comparables at 4½ years' service. After that, their standing falls precipitously, then levels off without perceptible movement against the comparables from 10 through 25 years' service.

Article XXVIII, Sections 2 and 3, and Appendix A of the Agreement explains the cause. Section 2 provides in part:

Officers will receive step increases in pay according to the following schedule:

Step 1. Upon appointment.

Step 2. Twelve months from date of appointment.

Step 3. Eighteen months from date of appointment.

Step 4 Thirty-six months from date of appointment.

Step 5. Fifty-four months from date of appointment.

The step increases referenced in Section 2 are set forth in Appendix A as follows:

POLICE OFFICER PAY PLAN

Step 1	Step 2	Step 3	Step 4	Step 5
\$ 16.11	\$ 16.51	\$ 19.83	\$ 21.71	\$ 23.26
\$ 1,288.80	\$ 1,320.80	\$ 1,586.40	\$ 1,736.80	\$ 1,868.80
\$33,508.80	\$34,340.80	\$41,246.40	\$45,156.80	\$48,588.80

In addition, Officers earn longevity pay under Section 3:

Permanent employees who have completed the required number of years of continuous service with the City by December 1 shall receive longevity pay on the last paycheck in November in accordance with this schedule:

<u>YEARS COMPLETED ON DECEMBER 1</u>	<u>AMOUNT</u>
5 years	\$300.00
10 years	\$450.00
15 years	\$600.00
20 years	\$750.00
25 years	\$1000.00

This payment will be pro-rated on the basis of monthly segments for members who terminate before December 1 in any fiscal year. Any employee who terminates after December 1 will reimburse the City on the same pro-ration.

As can be observed, Employees move rapidly through the step increases until they reach their 4½ year anniversary, when the steps end. After that, the difference between the annual pay of a 5-year Officer and one with 25 years' service is determined by Article XXVIII, Section 3 – Longevity Pay. And that twenty-year difference is only \$700.

This is an inequity that cannot be made right all at once, but I believe that the 2004-2005 Agreement should begin the corrective process. In recommending the correction, I must try to balance equity with the City's needs and to distribute limited resources where they will do the most good. A large increase on the base would not meet these ends. It would unduly burden the general fund without applying the money where it is most needed. Therefore, my recommendation for wages will encompass both the base and longevity pay. The base raise recommendation will be 2.5%. In addition to, and as an inseparable part of this recommendation, I will advise that longevity pay should be increased as follows:

5 years	From \$300 to \$425
10 years	From \$450 to \$750
15 years	From \$600 to \$900
20 years	From \$750 to \$1,050
25 years	From \$1,000 to \$1,300

Even if the parties accept this recommendation, it will provide only a temporary band-aid for the future. The underlying problem is that longevity is calcu-

lated in dollars instead of percentage of base pay. So long as this continues, the differentials between long- medium- and short-term Officers will shrink annually.

HEALTH CARE: It is obvious that Iowa City, and probably every other public employer, has to continually look for innovative ways to contain the cost of health insurance. Unions understand this and know that their memberships will have to "bite the bullet" and contribute increasingly to the expense of their families' health needs.

The City brought three proposals to the table; I find two of them to overly burden the employees for this negotiation. Doubling the coinsurance to save just 2% seems inordinate at this time. The same is true of the proposal to triple the employee cost of out-patient services for a savings of 7%.

The third proposal – increasing other deductibles from \$100 to \$300 – would not unreasonably reduce insurances and might warrant the 5% savings that the City would realize. However, neither the firefighters nor the service employees signed agreements with any of these changes. And though there have been minor differences in premium contributions over the past ten years, coverages for all employees in all three unions have been exactly the same. Each member of each union has received the same benefits and has been subject to the same deductibles, and coinsurance obligations.

In my judgement, health insurance is the area where internal parity is more crucial than in any other aspect of wages, hours, or employment terms. Accord-

ingly, while the City's proposal is probably justified, I find that it should be withheld from this Bargaining Unit until it is strenuously negotiated and accepted by the other two unions. As the City well understands, this might require concessions but that is not at all unique when an employer seeks to increase its employees' share of health-care costs. For these reasons, the recommendation will be to continue the current health-care language, as-is, through the next Collective Bargaining Agreement.

RECOMMENDATIONS

WAGES

Consistent with a factfinder's authority to make recommendations that deal with but do not exactly comport with the parties' submissions, the following recommendation for PLRO wage raises encompasses both an increase on the base and increases in longevity pay. In making these recommendations it is my intention to provide a majority of the Bargaining Unit with reasonable raises while distributing Iowa City's limited resources where they will do the most good. It should also be noted, that the raise on the base, which is intentionally low, is compensated for by additions to longevity and allows the Employer to backload its salary obligation. It is my intention that the following two recommendations are to be regarded as a single, inseparable issue, not two separate issues:

**ARTICLE XXVIII
COMPENSATION**

It is recommended that the base wage be raised 2.5% for the 2004-2005 Agreement.

**ARTICLE XXVIII, SECTION 3
LONGEVITY PAY**

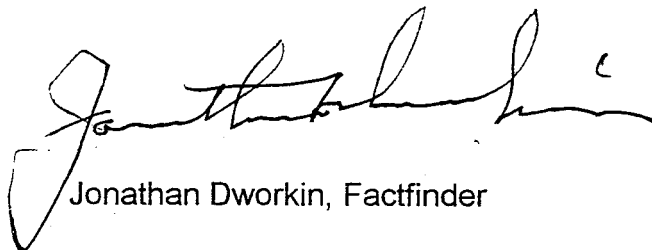
It is recommended that PLRO longevity pay be increased to the following amounts:

<u>YEARS COMPLETED ON DECEMBER 1</u>	<u>AMOUNT</u>
5 years	\$425
10 years	\$750
15 years	\$900
20 years	\$1,050
25 years	\$1,300

HEALTH CARE

It is recommended that the City retract its health-care proposal until such time as it is able to negotiate the changes it seeks with all three unions. Current language of the Iowa 500 Health Care Coverage Plan should be carried forward without amendment in the PLRO 2004-2005 Agreement.

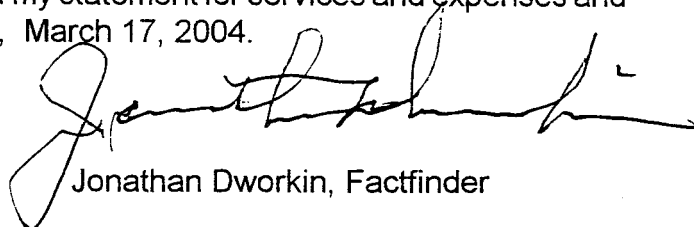
Recommendations issued at Lorain County Ohio March 16, 2004.



Jonathan Dworkin, Factfinder

SERVICE

True copies of the foregoing decision and recommendations were sent by Express Mail to Steve Rynecki, Iowa City Representative, 411 E. Wisconsin Avenue, #700, Milwaukee, WI 52302, and to Robert Rush, as representative of the Police Labor Relations Organization of Iowa City, 100 First Street, SW, Suite 111, Cedar Rapids, IA 52406-0637 this sixteenth day of March, 2004. A copy also was sent to PERB with a copy of my statement for services and expenses and the hearing record, by regular mail, March 17, 2004.



Jonathan Dworkin, Factfinder